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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,079	08/15/2001	Gary L. Mengeu	035373-00104	9573

7590

11/04/2004

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EXAMINER
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ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/930,079	<b>Applicant(s)</b> MENGEU ET AL.	
	<b>Examiner</b> Niki M. Eloshway	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 4-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Marino (U.S. 5,373,955). Marino teaches a container having an upper portion with closure engaging members 16-18, and a spout at 23-24. The closure 25 of Marino has an end wall 26, and a skirt 27-28. the container engaging members of the closure are elements 37. The first sealing elements are 33 and 24. The second seal is at 38 and 36.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perne et al. (U.S. 4,699,285) in view of Bergholtz (U.S. 6,260,723). Perne et al. discloses the claimed invention except for the rim being wedged in the gap. Bergholtz teaches that it is known to wedge a rim in a closure gap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container and closure of Perne et al. with the rim of the container being wedged in

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the gap of Perne et al., as taught by Bergholtz, in order to better seal the container and prevent movement of the rim.

Perne et al. teaches a container having a main body with an upper portion at 17. The spout has an upwardly and inwardly extending portion at 18 and topped with an upwardly and outwardly flared portion at 19 and 20 which terminates at a rim 21. The closure 30, shown in figure 2, has an end wall 32 and a skirt 31. Container engaging elements 44 engage the closure engaging elements 17 of the container. The annular sealing flange is comprised of elements 50, 53 and 54.

#### *Allowable Subject Matter*

5. Claims 4-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

6. Applicant's arguments filed January 9, 2004 have been fully considered but they are not persuasive. Applicant argues that "Perne et al. does not even have an annular sealing member that extends downward and inward, instead the annular sealing flange 50 of Perne et al. extends axially" on page 2 of the Response filed January 9, 2004. It is the examiner's position that the annular sealing flange 50 of Perne et al. extends axially downwardly and that the outer surface of the annular sealing flange extends radially inwardly as it extends axially downwardly.

7. In response to applicant's arguments against the reference of Bergholtz individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck*

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& Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Bergholtz is used in the rejection only for the teaching of wedging the rim of a container into a gap. The primary reference of Perne et al. teaches the gap and container rim.

8. Applicant argues that "Perne et al. does not disclose an upper portion of the inner surface of the closure skirt which extends downwardly and outwardly to form an upwardly converging gap with the annular flange" (page 2 of Response filed January 9, 2004). The examiner disagrees with this position. In figure 3a of Perne et al., it is clearly shown that that the inner surface of the skirt, adjacent element 20, extends downwardly and radially outwardly, as set forth in the claims. A gap is formed between the upper inner surface of the skirt and the sealing flange 50. This gap receives the container rim 20.

#### *Conclusion*

9. In view of the new grounds of rejection for claims 12 and 13, **THIS ACTION IS MADE NON-FINAL.**


10. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme  
Patent Examiner  
October 22, 2004



NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
11/1/04